

The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Leslie McIver
Dick Brown Road
Bridgewater, NH 03264

Re: 19 Loon Lake Road, Plymouth, NH

ADMINISTRATIVE ORDER

No. WMD 04-17

December 7, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Leslie McIver pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Leslie McIver is an individual having a mailing address of Dick Brown Road, Bridgewater, NH 03264.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. Leslie McIver is the owner of land at 19 Loon Lake Road, Plymouth, NH, more particularly described in a deed recorded in the Grafton County Registry of Deeds at Book 2114, Page 0424, and identified on Plymouth Tax Map 2 as Block 5, Lot 1 ("the Site").
3. On July 22, 2004, DES received a complaint alleging that solid wastes were being buried at the Site.
4. On August 17, 2004, DES personnel conducted an inspection of the Site ("August Inspection"). The purpose of the August Inspection was to determine Ms. McIver's compliance status relative to RSA 149-M and the Solid Waste Rules.

5. RSA 149-M:4, XXII defines "solid waste" in part, as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
6. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
7. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."
8. During the August Inspection, DES personnel observed approximately 20 cubic yards of debris. DES personnel observed clothing, plastic toys, paper, plywood, a shower stall, and other debris from the demolition of a residence. DES personnel also observed several piles of scrap metal, equipment, and machinery scattered about the Site.
9. The clothing, paper, plastic toys, plywood, a shower stall, debris from the demolition of a residence, and scrap metal observed by DES personnel at the Site are solid wastes as defined by RSA 149-M:4, XXII.
10. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."
11. The Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX.
12. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a [solid waste] facility."
13. Ms. McIver is the owner of a solid waste facility.
14. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."
15. A review of DES files shows that Ms. McIver has not applied for or received a permit to operate a solid waste facility at any New Hampshire location.

16. On August 18, 2004, DES personnel contacted Neil McIver, Ms. McIver's ex-husband who currently resides at the Site, relative to the solid waste at the Site. Mr. McIver informed DES personnel that his son had been active in the junk business and was bringing scrap metal to the Site. Mr. McIver advised DES personnel that the Site would be cleaned up within 30 days. DES personnel advised Mr. McIver to obtain receipts for the disposal of the solid waste.

17. On September 23, 2004, DES personnel conducted a follow-up inspection of the Site ("September Inspection"). In addition to the material observed during the August Inspection, DES personnel observed the following:

- a. A 10 x 10 foot area of solid waste consisting of plywood, metal, fiberglass, furniture, and an aerosol can had been burned;
- b. The remnants of a burn pile which consisted of drywall material, painted wood, vinyl siding, and glass;
- c. Partially buried solid waste, specifically metal, tires, a metal drum, and a poly drum top, in the embankment; and
- d. A pile of solid waste consisting of wafer board, particle board, painted and varnished wood, plywood, plastic, brush, and logs.

18. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility."

19. Solid waste was disposed at the Site. This Site is not approved to accept solid waste.

20. Env-Wm 2702.02(e) specifies that "Facilities and practices shall not cause air pollution in violation of federal or state law, any air quality rules implemented by DES, the conditions of any air quality permit issued by DES, or the New Hampshire State Implementation Plan under the Clean Air Act.

21. Env-A 1001.05(d), adopted by the Commissioner of DES, states that the following types of burning shall be permissible without authorization from DES: "On-site burning by the landowner of brush, leaves, or untreated wood from the construction or demolition of a building provided the material originates on-site".

22. Solid waste was burned at the Site which did not meet the criteria set forth in Env-A 1001.05(d).

D. DETERMINATION OF VIOLATIONS

1. Leslie McIver has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.
2. Leslie McIver has violated RSA 149-M:9, II by disposing solid waste at an unpermitted solid waste facility.
3. Leslie McIver has violated Env-Wm 2702.02(e) by burning solid waste other than as allowed by Env-A 1001.05(d).

ORDER

Based on the above findings, DES hereby orders Leslie McIver as follows:

1. **Immediately** cease operating an unpermitted solid waste facility.
2. **Immediately** cease disposing of solid waste at an unpermitted facility.
3. **Immediately** cease burning non-conforming solid waste other than as allowed by Env-A 1001.05(d).
4. **Within 45 days**, remove all solid waste at the Site to a facility or facilities permitted to accept such wastes.
5. **Within 10 days of the proper disposal of the solid waste**, forward copies of disposal receipts to DES.
6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka
NHDES
80 Glen Road
Gorham, NH 03581
Telephone: (603) 466-5389
e-mail: mgaluszka@des.state.nh.us


F. APPEAL

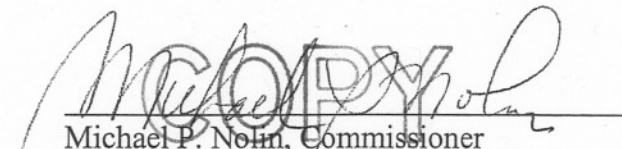
Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Leslie McIver of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Leslie McIver remains obligated to comply with all applicable requirements, in particular RSA 149-M. DES will continue to monitor Leslie McIver's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Grafton County Registry of Deeds so as to run with the land.


Anthony P. Giunta, P.G., Director
Waste Management Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 0600 0023 9932 1547

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Neil McIver, Plymouth, NH
Town Clerk, Plymouth, NH
Grafton County Registry of Deeds

Enclosures: AO Fact Sheet CO-7